

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

PERRY FULLER,)
)
Plaintiff,)
)
v.) No.: 1:12-cv-01285-JDB-egb
)
TEAMSTERS LOCAL 217,)
)
Defendant.)

REPORT AND RECOMMENDATION

On referral to this Magistrate Court is the *pro se* Plaintiff's motion [D.E.18], which the District Court has construed as a motion for reconsideration of this Magistrate Court's earlier report and recommendation wherein it was recommended that Plaintiff's complaint be dismissed. Defendant has filed a response opposing Plaintiff's motion [D.E.20].

SUMMARY OF THE RELEVANT EVENTS

- December 12, 2012: Plaintiff's lawsuit removed to Federal Court [D.E. 1]; Motion for more definite statement filed [D.E. 2].
- January 15, 2013: Plaintiff fails to appear at the Scheduling Conference [D.E. 7].
- April 17, 2013: Order To Show Cause why case should not be dismissed for lack of prosecution and mailed by Clerk's Office by certified mail [D.E. 14]
- April 30, 2013: Certified Card returned to Clerk signed by Plaintiff Fuller on April 29, 2013 [D.E. 15].
- May 15, 2013: Report and Recommendation of Magistrate Judge to dismiss for lack of prosecution entered and mailed by Clerk to Plaintiff via certified mail [D.E. 15].

- May 17, 2013: Copy of Report and Recommendation received and signed for by Plaintiff [D.E. 17].
- June 3, 2013: Plaintiff filed Motion for Reconsideration of Report and Recommendation.

Report and Recommendation

In his letter, viewed as a motion to reconsider this Court's earlier recommendation to dismiss this case for failure to prosecute, Plaintiff explains he was in the hospital at the time of the January 15, 2013 scheduling conference and that he presently is taking dialysis three days a week. Notwithstanding, the Order to show cause why his case should not be dismissed *occurred in April* and the Order of this Court recommending dismissal *in May*. The Court Clerk has mailed all notices to Plaintiff, which he received and evidenced by his signature. And he has had the ability to write a letter or otherwise communicate with the Court or opposing counsel. It is this Court's opinion that Plaintiff has failed to act in a timely fashion and offers an insufficient explanation why he failed to do so.

It is the report and recommendation that Plaintiff's motion be denied.

Respectfully Submitted,

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: June 19, 2013

**ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATIONS
MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A
COPY OF THE REPORT AND RECOMMENDATIONS. 28 U.S.C. § 636(b)(1). FAILURE
TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF
OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.**